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**ORIGINAL**

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**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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Docket No. 08- 03

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**MAHER TERMINALS, LLC**

**COMPLAINANT**

**v.**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**RESPONDENT**

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**COMPLAINT**

Complainant, Maher Terminals, LLC ("Maher") by and through the undersigned hereby files this Complaint against The Port Authority of New York and New Jersey ("PANYNJ") alleging violations of the Shipping Act of 1984, *as amended* (46 U.S.C. § 40101 et seq.) (the Shipping Act").

**I. Complainant**

A. Complainant Maher is a limited liability company ("LLC") registered in the State of Delaware.

B. Maher's corporate offices are located at 1210 Corbin St., Elizabeth, New Jersey and Maher has facilities located at Elizabeth, New Jersey.

## **II. Respondent**

A. PANYNJ is a body corporate and politic created by Compact between the States of New York and New Jersey and with the consent of the Congress and having offices at 225 Park Avenue South, New York, New York.

B. PANYNJ owns marine terminal facilities in the New York New Jersey area, including in Elizabeth, New Jersey.

## **III. Jurisdiction**

A. PANYNJ is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14).

B. The PANYNJ and Maher are parties to agreement EP-249 filed with the Federal Maritime Commission ("Commission") and designated FMC Agreement No. 201131.

C. The PANYNJ and APM Terminals North America, Inc., formerly known as Maersk Container Service Company, Inc. ("APMT") are parties to agreement EP-248 filed with the Commission and designated FMC Agreement No. 201106.

D. The Commission has jurisdiction over this Complaint which is filed pursuant to the Shipping Act, 46 U.S.C. § 41301.

E. The Commission has jurisdiction over this Complaint because the PANYNJ is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14) and the actions of the PANYNJ which are the subject of this Complaint are violations of the Shipping Act.

#### **IV. Statement of Facts and Matters Complained of**

A. Maher seeks a cease and desist order and reparations for injuries caused to it by PANYNJ's violations of the Shipping Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c), because PANYNJ (a) gave and continues to give an undue or unreasonable prejudice or disadvantage with respect to Maher, (b) gave and continues to give an undue or unreasonable preference or advantage with respect to APMT, (c) has and continues unreasonably to refuse to deal or negotiate with Maher, and (d) has and continues to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property.

B. PANYNJ's agreement with APMT, EP-248, violated the foregoing provisions of the Shipping Act by granting and continuing to grant to APMT unduly and unreasonably more favorable lease terms than provided to Maher in EP-249, including but not limited to the basic annual rental rate per acre, investment requirements, throughput requirements, a first point of rest requirement for automobiles, and the security deposit requirement.

C. In EP-248, PANYNJ provided and continues to provide APMT a base annual rental rate of \$19,000 per acre retroactive to 1999 and fixed for the approximately 30 year term of the agreement which it did not provide to Maher.

D. By contrast, in EP-249, PANYNJ required and continues to require Maher to pay a base annual rental rate of \$39,750 per acre and additionally required Maher to pay a basic rent escalator of two percent per annum such that by the end of the 30 year term of the lease Maher's basic rent rises to \$70,590 per acre, or an unreasonable difference of \$51,590 per acre more than the PANYNJ charges APMT.

E. Over the approximately 30 year term of the agreements, this undue prejudice disadvantaging Maher and undue preference advantaging APMT totals million of dollars.

F. PANYNJ also unlawfully preferred and continues to prefer APMT over Maher with respect to the investment requirements in the PANYNJ property that is the subject of the leases. PANYNJ required and continues to require Maher to invest greater sums than it required APMT to invest and PANYNJ provided and continues to provide APMT more favorable financing terms than it provided Maher, requiring Maher to repay the investments at a higher rate than PANYNJ provided APMT.

G. PANYNJ also unlawfully preferred and continues to prefer APMT over Maher with respect to the container throughput requirements and the consequences thereof that are the subject of the leases. PANYNJ required and continues to require Maher to provide greater throughput guarantees and risk greater consequences than it required and continues to require of APMT.

H. PANYNJ also unlawfully preferred and continues to prefer APMT over Maher with respect to the first point of rest requirement imposed on Maher, but not required of APMT.

I. PANYNJ also unlawfully preferred and continues to prefer APMT over Maher with respect to the security deposit requirement by requiring Maher to provide a \$1.5 million deposit not required of APMT.

J. Despite Maher's request to the PANYNJ to be treated equally with APMT, the PANYNJ refused to deal with Maher and continues to refuse to deal with Maher and has required the foregoing undue and unreasonable preferences favoring APMT and prejudices disadvantaging Maher.

K. With respect to EP-248, during the year 2008 the PANYNJ negotiated with APMT to address APMT's claim that the PANYNJ violated the Shipping Act by failing to provide certain premises in a timely fashion, but at the same time the PANYNJ refused to negotiate with Maher concerning its claim that the PANYNJ violated the Shipping Act with respect to EP-249 by failing to provide certain premises to Maher in a timely fashion.

L. There is no valid transportation purpose for the foregoing undue or unreasonable prejudices against Maher and undue or unreasonable preferences advantaging APMT or for the PANYNJ's refusal to deal with Maher.

M. If there is a valid transportation purpose, the discriminatory actions of PANYNJ exceed what is necessary to achieve the purpose.

**V. Violations of the Shipping Act**

A. As a result of the foregoing, PANYNJ violated the Shipping Act, 46 U.S.C. §§ 41106(2) and (3) and 41102(c).

**VI. Injury to Maher**

A. As a result of PANYNJ's aforementioned violations of the Shipping Act, Maher has sustained and continues to sustain injuries and damages, including but not limited to higher rents, costs, and other undue and unreasonable payments and obligations to PANYNJ not required of APMT amounting to a sum of millions of dollars to be determined more precisely at hearing.

**VII. Prayer for Relief**

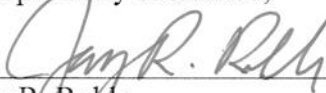
A. Statement regarding alternative dispute resolution procedures. Maher has met directly with the PANYNJ's leadership in an attempt to resolve this dispute, but the PANYNJ has

rebuffed Maher's requests. Therefore, Maher does not believe that alternative dispute resolution procedures would be productive and Maher has not consulted with the Commission's dispute resolution specialist.

B. WHEREFORE, Complainant Maher prays that Respondent PANYNJ be required to answer the charges in this Complaint; that after investigation and due hearing in Washington, D.C.; that an order be made commanding PANYNJ to cease and desist from the aforementioned violations of the Shipping Act, providing to Maher the preferences provided to APMT, putting in force such practices as the Commission determines to be lawful and reasonable; and that an order be made commanding PANYNJ to pay Maher reparations for violations of the Shipping Act, including the amount of the actual injury, plus interest, costs and attorneys fees, and any other damages to be determined; and that the Commission order any such other relief as it determines appropriate.

Date: June 2, 2008

Respectfully submitted,

  
\_\_\_\_\_  
Jay R. Ruble  
Director of Legal Affairs  
Maher Terminals, LLC

  
\_\_\_\_\_  
Lawrence I. Kiern  
Bryant E. Gardner  
Gerald A. Morrissey III  
Winston & Strawn LLP  
1700 K Street, N.W.  
Washington, DC 20006-3817  
(202) 282-5811  
Email: lkiern@winston.com  
Email: gmmorrissey@winston.com

**VERIFICATION**

I, Jay R. Ruble, Director of Legal Affairs of Complainant Maher Terminals, LLC, declare under penalty of perjury that the statements set forth in the foregoing are true and correct.

Date: June 2, 2008

  
\_\_\_\_\_  
Jay R. Ruble  
Director of Legal Affairs  
Maher Terminals LLC

### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the forgoing document upon the persons listed below in the matter indicated, a copy to each such person.

Via Federal Express  
Donald F. Burke, New Jersey Solicitor  
The Port Authority of New York  
and New Jersey  
225 Park Avenue, South, 13<sup>th</sup> Floor  
New York, NY 10003

Dated at Washington, DC, this 3<sup>rd</sup> day of  
June 2008.



---

Ellen Berndtson



ORIGINAL

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**Docket No. 08-03**

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**MAHER TERMINALS, LLC**

**COMPLAINANT**

**v.**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**RESPONDENT**



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**COMPLAINANT'S FIRST SET OF INTERROGATORIES**  
**PROPOUNDED ON THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

Complainant, Maher Terminals, LLC ("Maher"), by undersigned counsel, hereby propounds the following Interrogatories upon Respondent The Port Authority of New York and New Jersey ("PANYNJ"), pursuant to Rule 205 of the Federal Maritime Commission Rules of Practice and Procedure (the "Rules"). PANYNJ shall answer each Interrogatory separately and fully in writing under oath in accordance with the following instructions and definitions, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

The answers should include all information known by PANYNJ or available to PANYNJ directly or through agents, representatives, or attorneys as of the date of verification. Answers

are due within 20 days unless otherwise agreed by the parties in accordance with the schedule to be developed pursuant to Rule 201 and PANYNJ must thereafter supplement such responses as and when required by the Rules, to be updated through the date of hearing.

### **INSTRUCTIONS**

1. All Interrogatories should be verified and answered on the basis of your knowledge, including that of your representatives, agents, and, unless privileged, attorneys. Each answer should identify all persons involved or assisting in the response to that interrogatory, including but not limited to the person from whom the information contained in each answer was obtained. If you cannot answer any interrogatory on the basis of your personal knowledge, please answer the interrogatory on the basis of your information and belief; all such responses, however, should indicate that the answer is based on your information and belief, rather than your personal knowledge.

2. If you cannot answer an interrogatory after conducting a reasonable investigation, please so state and answer to the extent you can, stating what information you cannot provide and stating what efforts you have made to obtain the requested information.

3. If you contend that the answer to any interrogatory is privileged, in whole or in part, or if you otherwise object to any part of the interrogatory, please identify the nature of the privilege which is being claimed; if the privilege is being asserted in connection with a claim or defense governed by State law, set forth the privilege rule being invoked; and identify each person having knowledge of the factual bases on which the privilege or other objection is asserted.

4. If you object to, or otherwise decline to respond to any portion of an Interrogatory, please answer that portion of the Interrogatory to which you do not object or to

which you do not decline to answer. If you object to an Interrogatory on the ground that it is too broad (i.e., that it requests information which is relevant to the subject matter of the action and information which is not), please answer the Interrogatory to the extent that it is concededly relevant. If you object to an Interrogatory on the ground that to answer the Interrogatory would constitute an undue burden, please answer the Interrogatory to the extent that it can be answered without undertaking an undue burden.

5. You are under a continuous obligation to supplement your answers to these Requests under the circumstances specified in Rule 201(j)(2).

6. Unless otherwise specified, the Interrogatories are intended to be limited to the period from 1997 to the present.

### **DEFINITIONS**

As used herein, the following definitions apply:

“Agent” shall mean: any agent, employee, officer, director, attorney, independent contractor or any other person acting at the direction of or on behalf of another.

“Agreement of Lease 248” or “EP-248” shall mean the agreement between PANYNJ and Maersk Container Service Company, Inc. (a/k/a APM Terminals North America (“APMT”)) dated as of January 6, 2000 and filed with the Federal Maritime Commission (“FMC”) as FMC Agreement No. 201106.

“Agreement of Lease EP-249” or “EP-249” shall mean the agreement between PANYNJ and Maher dated as of October 1, 2000 and filed with the FMC as FMC Agreement No. 201131.

APM Terminals North America (“APMT”) is the successor in interest to Maersk Container Service Company, Inc. and is a marine terminal operator that operates a marine terminal in Elizabeth, New Jersey pursuant to EP-248.

“Communication” includes, but is not limited to, correspondence, telephone calls, facsimiles, electronic mail (“e-mail”), and meetings; and records of such communications, including but not limited to transcripts, notes, records, memoranda, and recordings of such communications, in whole or in part.

"Complaint" shall mean the Complaint of Maher filed in this proceeding.

"Complainant" shall mean Maher.

“Date” shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date based upon the relationship with other events.

The term “describe in detail” mean as follows:

- a. When used to refer to actions, identify each action by date, persons involved, actions taken, and documents involved. For all such persons or documents, identify such persons or documents in accordance with these instructions.
- b. When used to refer to an allegation, identify all evidence upon which you intend to rely to support the allegation and the legal basis for the allegation.

The term “document” means any written or any other tangible thing of every kind and description, however produced or reproduced, including electronic data, whether draft or final, in the actual or constructive possession, custody or control of PANYNJ, original or reproduction, including but not limited to: letters, correspondence, notes, films, transcripts, telegrams, teletype messages, contracts and agreements including drafts, proposals, any and all modifications thereof, licenses, memoranda, notes, transcripts and recordings of telephone conversations or personal conversations, microfilm, microfiche, books, newspapers, magazines, advertisements, periodicals, bulletins, circulars, pamphlets, statements, notices, memoranda (including inter and intra office memoranda, memoranda for file, pencil or pen jotting, diary entries, desk calendar

entries, expense accounts, recorded recollections and any other written form of notation of events thereto, draft minutes, resolutions and agendas), expressions and/or statements of policy, lists of persons attending meetings and conferences, reports, rules, regulations, directions, communications, interoffice communications, reports, financial statements, tax returns, ledgers, books of account, proposals, prospectuses, offers, orders, receipts, analyses, audits, working papers, computations, projections, tabulations, financial records, blueprints, plans, writings, drawings, graphs, charts, photographs, phono-records and other data computations from which information can be obtained (translated, if necessary, into reasonably usable form), invoices, receipts, working papers, desk calendars, appointment books, diaries, time sheets, logs, movies, tapes for visual audio reproduction, recordings, computer tapes and discs, electronic media, reports and/or summaries of investigations, opinions and/or reports of consultants, appraisals, reports and/or summaries of negotiations, proposals, "e-mail," electronic mail, voice mail or material similar to any of the foregoing, however denominated. The term "document" shall also include all copies of each document if the copies contain any additional writing or are not identical copies of the originals.

The terms "identify" or "state the identity of" mean as follows:

- a. When used to refer to a non-natural person, provide the entity's full name, address of its main office or principal place of business, all addresses used by the entity, its state of incorporation, if any, phone number of its principal place of business, and phone number for each address used by the entity.
- b. When used to refer to a natural person who is not an expert witness expected to be called at trial, provide his full name, occupation, present employer, business

address and telephone number, and his home address and telephone number and a summary of the anticipated testimony from such person, if any;

- c. When used to refer to a natural person who is expected to be called as an expert witness at trial, provide all information required of a natural person who is not an expert witness pursuant to subsection b. above, and in addition state said witness' field of expertise and qualifications as an expert;
- d. When used to refer to a "document," state the date of the document; its title, if any; specify the author and each person who participated in preparing the document; the person or persons to whom it is addressed; the person or persons who were intended to receive one or more copies of all or part of the document at or about the time it was sent or delivered to its intended recipient; and specify each person who presently has possession, custody or control of the original and/or any copies of the document.
- e. When used to refer to a "communication," state the date of the communication, the mode of communication (face-to-face discussion, telephone conversation, memorandum, letter, etc.), specify the person conveying information (the communicator), specify the person to whom the communication was directed and the persons to whom copies of the communication, if any, were sent, summarize the substance of the communication, and identify all witnesses to the communication.

"Person" shall mean any individual, corporation, proprietorship, partnership, trust, association or any other entity.

The words “pertain to” or “pertaining to” mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evidences, shows, refutes, disputes, rebuts controverts or contradicts.

The term “proceeding” shall mean the proceeding before the FMC captioned *Maher Terminals, LLC v. The Port Authority of New York and New Jersey*.

The term “third party” or “third parties” refers to individuals or entities that are not a party to this proceeding.

The words “you,” “yours” and/or “yourselves” means PANYNJ and any Commissioners, directors, officers, employees, agents, representatives or other persons acting, or purporting to act, on PANYNJ’s behalf.

The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

The singular shall include the plural and vice versa; the terms “and” or “or” shall be both conjunctive and disjunctive; and the term “including” shall mean “including without limitation.”

Unless otherwise defined, all words and phrases used in these Interrogatories shall be accorded their usual meaning as defined in *Webster’s New Universal Unabridged Dictionary* (2d ed. 1983).

### **INTERROGATORIES**

In accordance with the Instructions and Definitions set out above, PANYNJ is hereby requested to answer the following Interrogatories:

1. Describe in detail PANYNJ's basis for providing the basic rental term of \$19,000 per acre to APMT in EP-248.

2. Describe in detail PANYNJ's basis for providing the basic rental term of \$39,750 per acre to Maher in EP-249.
3. Describe in detail PANYNJ's basis for requiring a two percent annual increase in Maher's basic rent per acre in EP-249 from \$39,750 per acre to \$70,590 per acre.
4. Describe in detail PANYNJ's basis for not requiring a two percent annual increase in APMT's basic rent per acre in EP-248 and for holding the basic rent at \$19,000 for the term of the APMT lease.
5. Describe in detail PANYNJ'S basis for retroactively reducing APMT's rent while not providing Maher the benefit of the same lease provision.
6. Describe in detail, the investments that PANYNJ required APMT to make in PANYNJ port facilities per EP-248, including the dollar value thereof.
7. Describe in detail the investments that the PANYNJ required Maher to make in PANYNJ port facilities per EP-249, including the dollar value thereof.
8. Describe in detail the PANYNJ's basis for providing the financing terms that PANYNJ provided to APMT in EP-248.
9. Describe in detail the PANYNJ's basis for providing the financing terms that PANYNJ provided to Maher in EP-249.
10. Describe in detail PANYNJ's basis for the container throughput terms provided to APMT in EP-248.
11. Describe in detail PANYNJ's basis for the container throughput terms provided to Maher in EP-249.

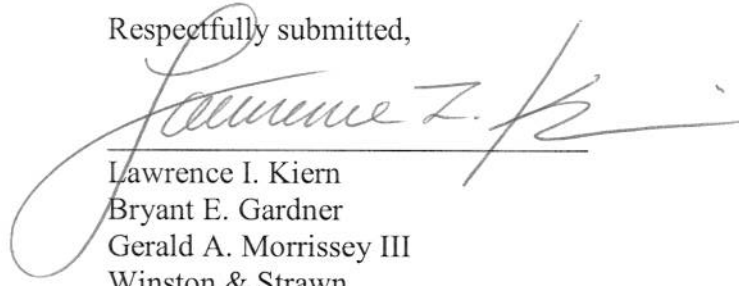


12. Describe in detail PANYNJ's basis for not requiring a security deposit from APMT in EP-248.
13. Describe in detail PANYNJ's basis for requiring Maher to provide a \$1.5 million security deposit.
14. Describe in detail PANYNJ's basis for not requiring APMT to provide a first point of rest for automobiles at its terminal in EP-248.
15. Describe in detail PANYNJ's basis for requiring Maher to provide a first point of rest for automobiles at its terminal as set forth in Section 48 of EP-249.
16. Describe in detail PANYNJ's basis for discussing settlement with APMT during 2007 and 2008 regarding APMT's claims as set forth in Federal Maritime Commission ("FMC") Docket 07-01.
17. Describe in detail PANYNJ's basis for refusing to deal with Maher during 2007 and 2008 regarding Maher's claims as set forth in Federal Maritime Commission ("FMC") Docket 07-01.
18. Describe in detail any valid transportation purpose that PANYNJ contends justifies the foregoing differences between the terms of EP-248 and EP-249.
19. Identify the PANYNJ persons known to you to have knowledge concerning the following subjects and where more than one person has knowledge concerning an issue, list all such persons and further *specify the person who is most knowledgeable*:
  - a. The negotiation of EP-248 and EP-249.

- b. The PANYNJ's basis for the basic rent rates in EP-248 and 248.
  - c. The PANYNJ's basis for not requiring of APMT in EP-248 to pay an annual two percent basic rent escalator as required of Maher in EP-249.
  - d. The PANYNJ's basis for the container throughput requirements in EP-248 and 249.
  - e. The PANYNJ's basis for the investment requirements of EP-248 and EP-249.
  - f. The PANYNJ's basis for the security deposit requirements of EP-248 and 249.
  - g. The PANYNJ's basis for the first point of rest requirement for automobiles provided in Section 48 of EP-249.
  - h. The PANYNJ's basis for discussing settlement with APMT regarding APMT's claims set forth in FMC Docket No. 07-01.
20. Identify all persons you intend to call as fact witnesses at depositions or hearings pertaining to this matter.
21. Identify all persons you intend to call as expert witnesses at depositions or hearings pertaining to this matter.
22. For each denial of PANYNJ's answer to the Complaint, identify all evidence upon which you intend to rely to substantiate each specific denial.

23. Describe in detail any information in the possession of PANYNJ pertaining to PANYNJ's providing lease terms to APMT not provided to Maher as alleged in the Complaint that PANYNJ contends exculpate it from liability, that is, information that tends to exonerate PANYNJ of legal responsibility for the allegations of the Complaint.

Respectfully submitted,

A large, stylized handwritten signature in dark ink, appearing to read "Lawrence I. Kiern", is written over a horizontal line.

Lawrence I. Kiern  
Bryant E. Gardner  
Gerald A. Morrissey III  
Winston & Strawn  
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Email – [gmorrissey@winston.com](mailto:gmorrissey@winston.com)

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the forgoing document upon the persons listed below in the matter indicated, a copy to each such person.

Via Federal Express  
Donald F. Burke, New Jersey Solicitor  
The Port Authority of New York  
and New Jersey  
225 Park Avenue, South, 13<sup>th</sup> Floor  
New York, NY 10003

Dated at Washington, DC, this 3<sup>rd</sup> day of  
June 2008.



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Ellen Berndtson

ORIGINAL

**BEFORE THE  
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**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**RESPONDENT**



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**COMPLAINANT'S FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS  
FROM THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

Complainant, Maher Terminals, LLC ("Maher"), by undersigned counsel, hereby propounds the following Requests for Production of Documents (these "Requests") upon Respondent The Port Authority of New York and New Jersey ("PANYNJ"). PANYNJ shall produce the documents requested and otherwise respond to these requests separately, fully and in writing within 20 days unless otherwise agreed by the parties in accordance with the schedule to be developed pursuant to Rule 201 of the Federal Maritime Commission Rules of Practice and Procedure (the "Rules"), and thereafter supplement such responses as and when required by the Rules, to be updated through the date of hearing.

## INSTRUCTIONS

1. If you object to any Request or part thereof on the claim of privilege, you must nevertheless provide the following information pursuant to Federal Rule of Civil Procedure 26(b)(5).

- a. the nature of the privilege claimed (including work product);
- b. if the privilege is being asserted in connection with a claim or defense governed by State law, the privilege rule being invoked;
- c. the date of the document or oral communication;
- d. if a document: its type (correspondence, memorandum, facsimile etc.), custodian, location, and such other information sufficient to identify the document for a subpoena *duces tecum* or a document request, including where appropriate the author, the addressee, and, if not apparent, the relationship between the author and addressee;
- e. if an oral communication: the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant; and
- f. the general subject matter of the document or oral communication.

2. You are under a continuous obligation to supplement your answers to these Requests under the circumstances specified in Rule 201(j)(2).

3. To the extent that you consider any of the Requests objectionable, answer so much of each Request and each part thereof as is not objectionable in your view and separately identify that part of thereof as to which you raise objection and each ground for each such objection.

4. Where documents in the possession or control of PANYNJ are requested, each Request includes documents not only in PANYNJ's possession, but also documents over which it has

control, including documents in the possession of PANYNJ's contractors, subcontractors, agents, representatives, experts and, unless privileged, PANYNJ's attorneys.

5. Unless otherwise specified, the Requests shall be limited to documents prepared or obtained during the period 1997 to the present.

6. All documents shall be produced as they are kept in the usual course of business. Individual files shall be produced separately and labeled to identify the person from whose files it is produced.

7. All documents shall be produced with a listing of each document or file identified by Bates number.

8. Electronic data should be produced in the form of a TIF with metadata attached. In addition, all electronic data should be preserved in native format without alteration or deletion of data, including metadata.

### **DEFINITIONS**

As used herein, the following definitions apply:

"Agent" shall mean: any agent, employee, officer, director, attorney, independent contractor, subcontractor, representative, or any other person acting at the direction of or on behalf of another.

"Agreement of Lease 248" or "EP-248" shall mean the agreement between PANYNJ and Maersk Container Service Company, Inc. (a/k/a APM Terminals North America, Inc. or "APMT")) dated as of January 6, 2000 and filed with the Federal Maritime Commission ("FMC") as FMC Agreement No. 201106.

"Agreement of Lease EP-249" or "EP-249" shall mean the agreement between PANYNJ and Maher dated as of October 1, 2000 and filed with the FMC as FMC Agreement No. 201131.

APM Terminals North America ("APMT") is the successor in interest to Maersk Container Service Company, Inc. and is a marine terminal operator that operates a marine terminal in Elizabeth, New Jersey pursuant to EP-248.

"Communication" includes, but is not limited to, correspondence, telephone calls, facsimiles, electronic mail ("e-mail"), and meetings; and records of such communications, including but not limited to transcripts, notes, records, memoranda, and recordings of such communications, in whole or in part.

"Complaint" shall mean separately and/or collectively the Complaint Maher filed in this proceeding.

"Complainant" shall mean Maher.

"Date" shall mean the exact date, month and year, if ascertainable or, if not, the best approximation of the date based upon the relationship with other events.

The term "document" means any written or any other tangible thing of every kind and description, however produced or reproduced, whether draft or final, in the actual or constructive possession, custody or control of PANYNJ, original or reproduction, including but not limited to: letters, correspondence, notes, films, transcripts, telegrams, teletype messages, contracts and agreements including drafts, proposals, any and all modifications thereof, licenses, notes, transcripts and recordings of telephone conversations or personal conversations, microfilm, microfiche, books, newspapers, magazines, advertisements, periodicals, bulletins, circulars, pamphlets, statements, notices, memoranda (including inter and intra office memoranda, memoranda for file, pencil or pen jotting, diary entries, desk calendar entries, expense accounts, recorded recollections and any other written form of notation of events thereto, draft minutes, resolutions and agendas), expressions and/or statements of policy, lists of persons attending



meetings and conferences, reports, rules, regulations, directions, communications, interoffice communications, reports, financial statements, tax returns, ledgers, books of account, proposals, prospectuses, offers, orders, receipts, analyses, audits, working papers, computations, projections, tabulations, financial records, blueprints, plans, writings, drawings, graphs, charts, photographs, phono-records and other data computations from which information can be obtained (translated, if necessary, into reasonably usable form), invoices, receipts, working papers, desk calendars, appointment books, diaries, time sheets, logs, movies, tapes for visual audio reproduction, recordings, computer tapes and discs, electronic media, reports and/or summaries of investigations, opinions and/or reports of consultants, appraisals, reports and/or summaries of negotiations, proposals, presentations, "e-mail," electronic mail, voice mail or material similar to any of the foregoing, however denominated. The term "document" shall also include all copies of each document if the copies contain any additional writing or are not identical copies of the originals.

"Person" shall mean any individual, corporation, proprietorship, partnership, trust, association or any other entity.

The words "pertain to" or "pertaining to" mean: relates to, refers to, contains, concerns, describes, embodies, mentions, constitutes, constituting, supports, corroborates, demonstrates, proves, evinces, shows, refutes, disputes, rebuts controverts or contradicts.

The term "proceeding" shall mean this proceeding before the FMC captioned *Maier Terminals, LLC. v. The Port Authority of New York and New Jersey*.

The term "third party" or "third parties" refers to individuals or entities that are not a party to this proceeding.

The words “you,” “yours” and/or “yourselves” means PANYNJ and any Commissioners, directors, officers, employees, agents, representatives, agents, or other persons acting, or purporting to act, on PANYNJ’s behalf.

The use of the past tense shall include the present tense, and the use of the present tense shall include the past tense, so as to make the request inclusive rather than exclusive.

The singular shall include the plural and vice versa; the terms “and” or “or” shall be both conjunctive and disjunctive; and the term “including” shall mean “including without limitation.”

Unless otherwise defined, all words and phrases used in this Request For Production of Documents shall be accorded their usual meaning as defined in *Webster’s New Universal Unabridged Dictionary* (2d ed. 1983).

#### **REQUEST FOR PRODUCTION OF DOCUMENTS**

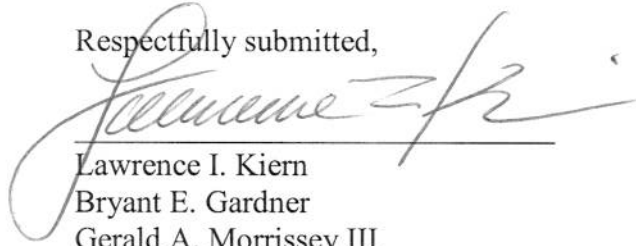
In accordance with the Instructions and Definitions set out above, PANYNJ is hereby requested to identify and produce all of the following documents:

1. All documents reflecting the communications, deliberations, negotiations, and actions of the Commissioners, the board of directors, the officers, employees, agents and representatives of the PANYNJ pertaining to the acts which are the subject of the Complaint.
2. All documents pertaining to any effort, initiative, proposal or other act by PANYNJ to persuade port users Maersk and/or Sealand from relocating operations from the Port of New York and New Jersey to another port, e.g. the Port of Baltimore or Halifax.

3. All documents pertaining to the preparation, proposal, consideration, negotiation, and drafting of EP-248, including but not limited to the meaning of any provision or term of EP-248.
4. All documents pertaining to the preparation, proposal, consideration, negotiation and drafting of EP-249, including but not limited to the meaning of any provision or term of EP-249.
5. All documents pertaining to the approval of EP-248 and EP-249 by the PANYNJ.
6. All documents in any way pertaining to meetings or communications between the PANYNJ and APMT pertaining to lease proposals.
7. All documents in any way pertaining to meetings or communications concerning the reasons why PANYNJ provided APMT the terms of EP-248.
8. All correspondence, notes, records, memoranda, or other documents in any way pertaining to meetings or communications concerning EP-249 and allegations of the Complaint.
9. All correspondence, notes, records, memoranda, or other documents in any way pertaining to meetings or communications concerning the reasons why PANYNJ did not provide Maher the terms provided to APMT in EP-248.
10. All PANYNJ rules, regulations, and practices pertaining to leases and the allegations of the Complaint.
11. All documents that PANYNJ contends exculpate it, that is, exonerate it of legal responsibility in this proceeding.

12. All documents pertaining to the settlement communications between PANYNJ and APMT during 2007 and 2008 regarding APMT's claims as set forth in Federal Maritime Commission ("FMC") Docket 07-01.
13. All documents that PANYNJ contends support the existence of a valid transportation purpose justifying the difference in terms provided to APMT under EP-248 as compared to the terms PANYNJ provided to Maher under EP-249.
14. All documents that PANYNJ contends support PANYNJ's contention that its actions do not exceed what is necessary to achieve a valid transportation purpose justifying the difference in terms provided to APMT under EP-248 as compared to the terms PANYNJ provided to Maher under EP-249.
15. The resume, engagement agreement, fee arrangement, invoices, and reports, including drafts of reports, of any and all experts or consultants retained by PANYNJ pertaining to the Complaint.
16. All documents produced in discovery in the proceeding *APM Terminals North America v. The Port Authority of New York and New Jersey v. Maher Terminals, LLC*, FMC Docket No. 07-01, and not otherwise produced in response to the foregoing requests.
17. All communications, including all documents, between PANYNJ and APMT pertaining to the subject matter of the Complaints not covered by the foregoing requests.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Lawrence I. Kiern", is written over a horizontal line. The signature is fluid and cursive, with a large initial "L" and a stylized "K" at the end.

Lawrence I. Kiern

Bryant E. Gardner

Gerald A. Morrissey III

Winston & Strawn

1700 K Street, N.W.

Washington, DC 20006

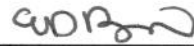
(202) 282-5811

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the forgoing document upon the persons listed below in the matter indicated, a copy to each such person.

Via Federal Express  
Donald F. Burke, New Jersey Solicitor  
The Port Authority of New York  
and New Jersey  
225 Park Avenue, South, 13<sup>th</sup> Floor  
New York, NY 10003

Dated at Washington, DC, this 3<sup>rd</sup> day of  
June 2008.



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Ellen Berndtson